

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ESTATE OF AMADOR HERNANDEZ, JR.,
AMADOR HERNANDEZ, III, Individually
and as Representative of the ESTATE OF
AMADOR HERNANDEZ, JR., AMANDA
YVETTE HERNANDEZ AND
MICHAEL HERNANDEZ

Plaintiffs,

vs.

UNITED STATES OF AMERICA,
DEPARTMENT OF VETERAN AFFAIRS,
MATTHIAS PELTZ, M.D.,
SHAFI MOHAMED, M.D. and
PHILIP L. SLADEK, M.D.

Defendants.

CIVIL ACTION No. 3:12-cv-04859-M

ECF

**DEFENDANT MATTHIAS PELTZ, M.D.'S
MOTION TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, Matthias Peltz M.D. ("Defendant"), one of the Defendants in the above-entitled and numbered cause, and files this Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) and/or Motion for Summary Judgment under Federal Rule of Civil Procedure 56, pursuant to Section 101.106(f) of the TEXAS CIVIL PRACTICE & REMEDIES CODE and asks that all claims against him in this action be dismissed with prejudice. In support thereof Dr. Peltz respectfully shows the Court as follows:

SUMMARY

Defendant requests dismissal of all claims against him with prejudice because he is immune from suit under 101.106(f) of the TEXAS CIVIL PRACTICE & REMEDIES CODE. Dismissal with prejudice is mandatory under the statute.

Dr. Peltz is concurrently filing a brief in support of these motions and an appendix. The brief sets forth the basis and legal support for the motion to dismiss and motion for summary judgment. The appendix contains the evidence to support these motions.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Matthias Peltz, M.D., respectfully requests and prays the Court to:

- (1) **GRANT** Defendant's Motion to Dismiss in all things and dismiss this cause of action against Matthias Peltz, M.D., under TEXAS CIVIL PRACTICE & REMEDIES CODE, Section 101.106(f) with prejudice;
- (2) **GRANT** Defendant's Motion for Summary Judgment in all things and dismiss this cause of action against Matthias Peltz, M.D., under TEXAS CIVIL PRACTICE & REMEDIES CODE, Section 101.106(f) with prejudice;
- (3) **ORDER** that Defendant recover his costs herein;
- (4) **ENTER** a final judgment as to Dr. Peltz under Federal Rule of Civil Procedure 54(b); and
- (5) **ORDER** that Defendant be awarded such other and further relief, both special and general, at law or in equity, to which Defendant may show himself justly entitled to receive.

Respectfully Submitted,

**STINNETT THIEBAUD & REMINGTON
L.L.P.**

/s/ Philipa Remington

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been forwarded to all known counsel of record on this the 11TH day of January, 2013.

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/s/ Philipa Remington

PHILIPA REMINGTON